

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Breeanne Buckley Peni, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

v.

DAILY HARVEST, INC. and SECOND BITE  
FOODS, INC. d/b/a "STONE GATE FOODS",

Defendants.

Civil Action No. 22-cv-05443  
Honorable Denise Cote

**CERTIFICATION OF SETTLEMENT ADMINISTRATOR'S COMPLIANCE WITH  
PROVISIONS OF THE PRELIMINARY APPROVAL ORDER AND DECLARATION IN  
SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF THE  
SETTLEMENT**

I, Edgar C. Gentle, III (the "Settlement Administrator"), pursuant to 28 U.S.C. § 1746, hereby declare that the foregoing is true and correct to the best of my knowledge:

1. I have been practicing law since 1981, and specialize in the mediation, settlement and administration of Mass Cases, including class actions. I often serve as Special Master or Settlement Administrator in this role, for about \$6 billion of cases. Class action settlements I helped create and now administer range from the \$1.4 Million West Virginia Copy Case to the \$2.7 Billion MDL 2406 Blue Cross and Subscribers Settlement. Class action Settlements involving personal injuries, including a discretionary damages fund, include the \$18 Million Pensacola Jail Fire Case, and the Louisville GE Factory Fire Case. Numerous aggregate case settlements we have administered include a discretionary damages fund, including the Total Body MDL Supplement Settlement, the Pradaxa Settlement, the Abilify MDL Settlement, the Injectafer Aggregate

Settlement, three train derailments, and many artificial hip and IVC filter aggregates. My resume is attached in Exhibit A.

2. On May 22, 2024, the Court entered the Order Granting Preliminary Approval of Settlement, and the terms set forth in the Class Action Settlement Agreement (the “Settlement”).

3. Notice to the Class - On June 19, 2024, pursuant to Section 7 of the Class Action Settlement Agreement, within twenty (20) business days after the entry of the Preliminary Approval Order, the Settlement Administrator provided Notice to the Class as stated below:

(a) The Settlement Notice substantially in the form of Exhibit C of the Settlement Agreement, was sent via electronic mail to the Class Notice List containing 20,820 email addresses. Reports showed the following statistics: 9,853 (49%) opened, 575 (3%) clicked the linked Notice inside the email, 533 (3%) bounced back, and were subsequently mailed to the physical address found in the Class Notice list, and 37 (1%) unsubscribed from future email communications.

(b) On August 25, 2024, the Settlement Administrator re-sent the Settlement Notice to the Class Notice List to remind Potential Class Members of the approaching Claims Deadline of September 2, 2024.

4. Settlement Website - Pursuant to Section 7 of the Settlement Agreement the Settlement Administrator activated the Settlement Website, <https://crumblessettlement.com/>, for public accessibility, with the following resources available: the Settlement Notice, Pleadings and Important Documents including, the Settlement Agreement and Exhibits, Preliminary Approval Order, Order Setting Final Approval Hearing, the Claim Form, and the Opt-Out Form, as well as answers to frequently asked questions, and contact information for Class Counsel and the

Settlement Administrator. Reports show the following statistics: approximately 5,400 users visited the website, 325 users visited the website using a search engine inquiry, and 3,000 users visited the “Filing a Claim Form” tab.

5. Opt-Out Deadline - As of July 24, 2024, the Opt-Out Deadline, thirteen (13) Potential Class Members submitted a valid Opt-Out Form. After reaching out to the 13 Opt-Outs to discuss their reasons for requesting exclusion from the Class and their potential concerns regarding participation, five (5) have revoked their Opt-Out submission, and have chosen to participate in the Settlement.<sup>1</sup>

6. Posting of the Hold Back Amount - On August 16, 2024, pursuant to Sections 17-21 of the Settlement Agreement, the Settlement Website was updated to notify Potential Class Members that the Parties agreed to a Hold Back amount equal to ten (10) percent of the Total Settlement Fund Value, or \$2.3 Million. The Settlement Website was subsequently updated to notify Potential Class Members that the parties have agreed to reduce the Hold Back amount by \$1.3 Million, for a total Hold Back amount of \$1 Million.

7. Objection Deadline As of September 2, 2024, the Objection Deadline, only one (1) objection was received and filed with the Court.<sup>2</sup>

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<sup>1</sup> After the Opt-Out Deadline had passed, the Settlement Administrator received two (2) additional Opt-Out Forms.

<sup>2</sup> Julie Watson filed an objection on July 24, 2024, that was subsequently supplemented on September 6, 2024.

8. Claim Form Processing – As of September 2, 2024<sup>3</sup>, the Settlement Administrator received 1,188<sup>4</sup> Claim Forms submitted via the following methods: the Settlement Website, the Settlement Email, secure portal uploads, mail, and fax. Pursuant to Section 26 of the Settlement Agreement, the Settlement Administrator has begun processing Claim Forms and will be evaluating, accepting or rejecting Claim Forms, based on the terms of the Settlement Program. Out of the 1,188 Claim Forms submitted, approximately 479 are represented by Counsel and 709 are pro se.

(a) *Category 5 Discretionary Fund* - In allocating the Discretionary Fund recovery among the applying Class Members, a fair, transparent and objective method is followed. The allocation is grounded first in the known science about the product, with injuries linked with the product by the science taking priority. Other injuries have to have a strong probability of linkage with the product. Like injuries are scored alike.

All applicants for the fund are scheduled for a live zoom presentation with us, with applicant counsel being allowed to participate. Often, these presentations result in the need for the applicant to supplement his or her proof, with a reasonable time being allowed to do so.

Following this presentation step, we prepare an initial draft of the proposed discretionary damages grid, composed of recovery categories of 5 to 10 depending on the

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<sup>3</sup> Because the Claim Form Deadline of September 2, 2024, fell on a holiday, Claim Forms submitted on the next business day, September 3, 2024, were considered to be timely filed. On September 10, 2024, Class Counsel agreed to the Settlement Administrator's suggestion to include an additional seven (7) claims that were filed within 3-5 days after the Claim Form Deadline. At this time, one (1) Potential Class Member has filed a late claim that has not been accepted.

<sup>4</sup> To note, the Settlement Administrator is still in the process of de-duplicating the Claim Form data. As a result, this number is only an estimation and does not mean these submissions necessarily meet the Eligibility Requirements found in Section 34 of the Settlement Agreement.

disparity in qualifying injuries, and provide it to the applicants for feedback on its fairness. In reviewing the draft, each applicant is told where he or she scores, and the scores of the other de-identified applicants. Based on applicant feedback, but adhering to the above method, we finalize the grid, and determine the awards.

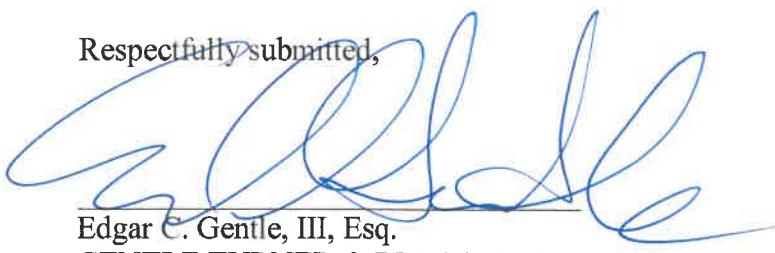
9. Cure Period - Pursuant to Section 36 of the Settlement Agreement, if a timely submitted Claim Form does not meet the Eligibility Requirement, prior to rejecting the Claim, the Settlement Administrator shall notify the Claimant in writing, by mail, first class postage pre-paid, to the Claimant with an emailed copy to counsel for Claimant (if any) to give the Claimant (or counsel for Claimant) the chance to remedy any curable deficiencies in the Proof of Claim Form within a period of twenty (20) days after such notice has been mailed or emailed.

10. Appeal Process - Pursuant to Section 27 of the Settlement Agreement, after receiving the Settlement Administrator's determination, Claimants will have twenty (20) days to appeal the Settlement Administrator's determination and submit additional supporting documentation. Within twenty (20) days of receiving an appeal request, the Settlement Administrator will review all additional supporting documentation and statements, and will notify the Claimant of his determination that shall be final and binding, except that Class Counsel and Defendant shall have the right to audit claims and to challenge the Settlement Administrator's decision by motion to the Court.

11. Reporting Requirement - Pursuant to Section 28 of the Settlement Agreement, the Settlement Administrator has provided the Parties de-identified reports respecting opt-out requests, objections, claims received, processed, and paid, and will continue to do so.

Dated: September 21, 2024

Respectfully submitted,



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*Settlement Administrator*

# EXHIBIT A

April 29, 2024

**CURRICULUM VITA**

<b>Name of Attorney:</b>	Edgar C. Gentle, III, Esq.
<b>Name of Firm:</b>	Gentle Turner & Benson, LLC
<b>Profession:</b>	Attorney
<b>Date of Birth:</b>	February 17, 1953
<b>Years with Firm:</b>	30
<b>Nationality:</b>	U.S.A.
<b>Memberships in Professional Societies:</b>	Admitted to Alabama State Bar (1981) and various Federal District Court and Appellate Court Bars

**A. Key Qualifications**

Ed Gentle was born in Birmingham, Alabama, February 17, 1953. He graduated summa cum laude in 1975 from Auburn University where he was a Danforth Scholar and earned a Bachelor of Science degree. In 1977 he received a Master of Science (summa cum laude) from the University of Miami as a Maytag Fellow.

He was a Rhodes Scholar (Auburn's second and Miami's first) at Oxford University, where he earned a B.A. degree with honors in Jurisprudence in 1979 and a M.A. degree in 1980. He then attended the University of Alabama School of Law as a Hugo Black Scholar. He earned his J.D. and was admitted to the Alabama State Bar in 1981.

Mr. Gentle has comprehensive experience in serving as Mediator, Special Master, Settlement Trustee, and Claims Administrator in Mass Tort Litigation, and providing grid design, claims administration and financial and business advice to Courts, Settling Parties, and Mass Tort Settlements. Approximately 90% of his professional time is devoted to this practice. He has helped create and administer over \$4.5 Billion in Settlements during the past 30 years. He has also provided expert affidavit, deposition and hearing testimony on the fairness of Mass Tort Settlements.

From 1992 to 2014, Mr. Gentle served as Special Master and Escrow Agent for the MDL 926 Global Breast Implant Settlement, paying \$1.2 Billion in claims for 300,000 claimants. From 2001 until 2003, he was Interim Financial Advisor for the Settlement Facility - Dow Corning Trust (the Dow Corning Breast Implant Settlement) overseeing the investment of over \$1 Billion and providing tax and accounting support for the Settlement, during part of Dow Corning's Chapter 11 Bankruptcy.

Commencing in December 2003, Mr. Gentle was appointed as the Settlement Administrator in the \$300 Million Anniston, Alabama Tolbert PCB Settlement with Monsanto and Solutia in connection with the administration of a Global Settlement before the Federal District Court for the Northern District of Alabama applicable to 18,000 claimants with respect to PCB contamination of property and PCB personal injury claims. In administering the \$300 Million settlement, Mr. Gentle designed the claimant payment program for property damage and personal injury, collected criteria for payments to each of the 18,000 claimants, ranked the claimants for payment amounts, satisfied private and government liens, and remitted payments to each of the claimants. The Settlement also provided primary medical and dental care and prescriptions to claimants, with this portion of the settlement being completed in 2016.

One of Mr. Gentle's specialties is serving as Settlement Administrator for Community Tort Settlements, such as a C-8 groundwater contamination case in Camden, New Jersey (with water filtration and damages 2004-2008), Warehouse Fire Settlements in Conyers, Georgia (2012) and Louisville, Kentucky (personal injury and property claims), Zinc Smelter Settlements in Spelter, West Virginia (medical monitoring and property remediation 2011-2017) and Blackwell, Oklahoma (property remediation 2013-2019), a coal slurry groundwater contamination Settlement in Mingo County, West Virginia (medical monitoring 2013), and two train wrecks in Kentucky (2010 and 2017), one in Alabama and one in West Virginia (personal injury and property claims 2017-2019).

In November, 2009, Mr. Gentle was appointed Claims Administrator in the Jefferson County, Alabama, Occupation Tax Refund Class Settlement before the Honorable David Rains, in the Circuit Court of Jefferson County. On May 14, 2010, the Supreme Court of Alabama upheld the \$37 Million Judgment. The Parties entered into a Class Settlement, which was approved by the Court, and tax refunds were issued to over 300,000 claimants. The case was completed in 2014.

In June 2010, Mr. Gentle was appointed Special Master and Settlement Administrator in the Total Body Multi-district Litigation, MDL 1985. The claimed toxigen was a selenium overdose in a health maintenance drink, with claimed damages being hair loss and damage to bodily organs. Working closely with the Court, Mr. Gentle facilitated the aggregate settlement of all cases, in August 2010. Mr. Gentle and his staff determined the value of each of the settled cases, which was consented to by all Plaintiffs, and Mr. Gentle administered the Settlement, satisfied private and government liens, and paid all claimants, which was completed in 2013.

In the Fall of 2011, after his successful mediation of a Settlement, Mr. Gentle was appointed Claim Administrator for the 1,000 family Perrine v. DuPont Zinc Smelter Class Action Settlement in Spelter, West Virginia, involving a \$40 million remediation program for soil and houses with respect to cadmium, arsenic, zinc and lead, and a 30 year medical monitoring program. The remediation program was completed in 2017, and the medical monitoring program will be completed in 2041.

In 2012, Mr. Gentle was appointed Claims Administrator of the Swiger v. AmeriGas, West Virginia statewide Class Settlement, involving monetary awards and remediation for

approximately 12,000 claimants and with respect to propane gas lines.

Mr. Gentle is Special Master in the national MDL Blue Cross Antitrust Litigation, MDL 2406, with putative provider and subscriber classes, before the Honorable R. David Proctor, having been appointed in 2012. The case has 3 groups of litigants: the Policy Subscribers, the Medical Providers and the 37 Blue Cross companies. There are over 100 million potential plaintiffs. Among his duties are mediating a Settlement of the subscribers/Blue Cross litigation, and auditing subscriber and provider common benefit attorney time and expenses. Mr. Gentle mediated a Settlement between the Subscribers and the Blues from 2017 to 2020, resulting in the filing of a proposed \$2.67B Settlement, approved by the Court in September 2022.

Mr. Gentle is now co-mediating a possible settlement between the Blue Cross companies and the Medical Providers in the same MDL.

From 2012 to 2014, Mr. Gentle, as Special Master, facilitated the creation and administration of a 93 claimant settlement with an undisclosed manufacturer and hospital concerning CT-Scan radiation exposure, with claimed damages being hair loss and cognitive deficiencies.

In 2013 and 2014, Mr. Gentle administered four separate Pfizer Chantix Aggregate Settlements, designing the payment matrix, handling claimant appeals, resolving liens, and paying claimants.

In 2013, Mr. Gentle was appointed Claims Administrator for the Coffey v. Phelps Dodge Oklahoma Circuit Court Class Settlement in Blackwell, Oklahoma with respect to a zinc smelter and involving a \$34 million remediation project for 1,000 households with respect to cadmium, arsenic, zinc and lead. The program was completed in 2019.

In 2014, Mr. Gentle was appointed Claims Administrator for the Mingo County, West Virginia medical monitoring program, lasting 30 years and involving 750 claimants exposed to coal slurry well contamination. The program will be completed in 2044.

In 2014, Mr. Gentle was appointed Plaintiff Lien Administrator for the Hydroxycut Mass Settlement.

In November 2014, Mr. Gentle was appointed one of three Special Masters in the Stryker Hip MDL, MDL 2441, handling settlement appeals and opt-out mediations. In October 2020, he was appointed as the only Special Master in an extension of this settlement program. He mediates Settlements of Stryker opt-outs, and decides appeals in the Stryker Settlement. The case involves approximately 3,000 claimants.

In 2015, 2016, and 2017, Mr. Gentle was hired by Defendant, Smith & Nephew, and Plaintiffs' Counsel to facilitate three Memphis, Tennessee aggregate settlements involving artificial hips and to resolve related plaintiff liens.

In May 2016, Mr. Gentle was appointed Claims Administrator by the Escambia County, Florida, Circuit Court in Allen v. A.E. New, the Pensacola jail fire and explosion case, to facilitate the class settlement of the 667 claimant case. The Settlement was approved in 2018.

In October 2016, Mr. Gentle was appointed Special Master by the Fulton County, Georgia Circuit Court in Smart v. Brenntag, to carry out the administration of a chemical spill class settlement.

In February 2017, Mr. Gentle was appointed Settlement Administrator of an industrial plant contamination settlement in Bowling Green, Kentucky involving personal injury and property damages plaintiffs and Federal Mogul, with the Aggregate Settlement being approved by the Court in August 2018.

In September 2017, Mr. Gentle was appointed Claims Administrator for a GE factory fire class settlement in Louisville, Kentucky.

In October 2017, Mr. Gentle was appointed Special Master by the West Virginia Federal District Court for the Southern District of West Virginia to administer the Mt. Carbon 400 claimant aggregate train derailment settlement with Sperry (personal injury and property damage). Subsequently, in March 2018, Mr. Gentle was appointed Special Master to administer the portion of the Settlement applicable to CSX.

In October 2017, Mr. Gentle was appointed Escrow Agent for the Common Benefit Fund in the Storz Morcellator Litigation in the Superior Court of California, of Los Angeles County.

In December 2017, Mr. Gentle was appointed Special Master by the Circuit Court of Duval County, Florida to administer a plastic surgery medical malpractice aggregate settlement with 260 female claimants.

In February 2018, Mr. Gentle was appointed Cy Pres Special Master for the Winston Jefferson County ad valorem tax class settlement case.

In June 2018 Mr. Gentle began to assist lead counsel in the Ability MDL 2734, to design a claimant payment grid and to facilitate a potential settlement of the case, and in February 2019 he was appointed Extraordinary Damages Award Special Master for the resulting aggregate settlement. The opt-out rate was less than 1%.

In September 2018, Mr. Gentle was appointed Special Master of a personal injury aggregate settlement involving a train derailment in Maryville, Tennessee with CSX and Union Tank as defendants.

In December 2018, Mr. Gentle was appointed Claims Administrator for the U.S. Pipe North Birmingham lead contamination Aggregate Settlement.

In May 2019, Mr. Gentle was appointed Settlement Special Master for a mercury contamination aggregate settlement in Florence, Alabama involving 97 plaintiffs.

In August 2019, Mr. Gentle was appointed by the Court to administer the aggregate settlement of a bus accident lawsuit in the Calhoun County, Alabama Circuit Court and involving 2 deaths and 44 personal injury claimants.

In November 2019 to November 2020, Mr. Gentle has been appointed Special Master to create grids and to administer three separate aggregate settlements for Bard IVC Filter claimants for six Plaintiffs' law firms.

In the Fall of 2020, Mr. Gentle was appointed Claims Administrator of the 4,000 Claimant Pradaxa Settlement.

In the Fall of 2021, Mr. Gentle was appointed Trustee and Claims Administrator of the \$700-750M 100,000 claimant Purdue Opioid Bankruptcy Personal Injury Settlement, now on appeal, with an anticipated Effective Date in 2024.

In the Spring of 2022, Mr. Gentle was appointed Trustee and Claims Administrator of the Personal Injury Claimant Mallinckrodt Opioid Bankruptcy Settlement, with an Effective Date of June 2022.

Commencing in 2022, Mr. Gentle is the Administrator for 3 Medical Monitoring Programs that share a clinic in Vermont: Sullivan et al. v. Saint-Gobain Performance Plastics Corporation ("Bennington"); Burdick et al. v. Tonoga, Inc. ("Petersburgh"); and Baker et al. v. Saint-Gobain Performance Plastics Corp. et al. ("Hoosick Falls").

New engagements in the second half of 2022 and 2023 include claims administration of the TPC Explosion Settlement in Port Neches, Texas and the Arkema Explosion Settlement in Crosby, Texas, Aggregate Settlements involving Smith & Nephew Hips, Roundup, and a pesticide, Special Master for Opioid Settlement receipts by a State for its counties and cities, and Personal Injury Trustee for the MNK Opioid Settlement and the Endo Settlement.

2024 engagements include a food contamination class action settlement.

**B. Education**

<u>Class Rank</u>	<u>School</u>
4	J.D., University of Alabama School of Law 1981 (Hugo Black Scholarship)
Middle	M.A., Jurisprudence, Oxford University 1980 (Rhodes Scholarship)
Middle	B.A., Honours Jurisprudence, Oxford University 1979 (Rhodes Scholarship)
1	M.S., <u>Summa Cum Laude</u> , University of Miami 1977 (Maytag Fellowship [washing machines])
1	B.S., <u>Summa Cum Laude</u> , Auburn University 1975 (Danforth Scholarship [Purina])

**C. Employment Record**

June 1992 - Present	Gentle Turner & Benson, LLC Managing Partner Birmingham, Alabama
September 1991 - June 1992	Miller, Hamilton, Snider & Odom Partner Manager of Birmingham, Alabama Office
January 1987 - September 1991	Schoel, Ogle, Benton, Gentle & Centeno Partner Birmingham, Alabama
December 1985 - January 1987	Law Offices of James L. North Associate Birmingham, Alabama
June 1983 - December 1985	AT&T Senior Staff Attorney Atlanta, Georgia
May 1981 - June 1983	North, Haskell, Slaughter, Young & Lewis Associate Birmingham, Alabama

**D. Contact Information**

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